Public Prosecutor v Jamaluddin bin Mokhtar

HIGH COURT (SHAH ALAM) — CRIMINAL TRIAL NO 45–50 OF 2005
ZAHARAH IBRAHIM J
26 APRIL 2006

Criminal Law — Dangerous Drugs Act 1952 — s 6 read with s 39A(2) — Drug possession — 1,220g of cannabis — Accused a first offender in relation to drug offences — Accused a young offender and pleaded guilty to the offence — Appropriate sentence

Criminal Procedure — Sentencing — Drug possession — Consideration of the public interest — Effect of mitigating factors

Criminal Procedure — Sentencing — Drug possession — Plea of guilty — Consideration of such plea in relation to drug cases

The accused was originally charged with the offence of trafficking in dangerous drugs under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'). An alternative charge of drug possession under s 6 of the DDA, punishable under s 39A(2) of the DDA was later preferred against the accused. The accused pleaded guilty to this alternative charge. The alternative charge was later amended to increase the weight of the drugs. The accused pleaded guilty to this amended alternative charge. In mitigation, counsel urged the court to consider, inter alia, the following: (i) the accused was a first offender in respect of drug related offences; (ii) the accused was a young offender — 21 years of age — at time of his arrest; (iii) the weight of the drugs was not exceptionally large; (iv) the accused had pleaded guilty and was therefore entitled to a discount. The prosecution however pointed out that drug related offences were serious offences and drug abuse was the nation's number one enemy. Upon convicting the accused, the High Court had to assess a suitable sentence.

Held, sentencing the accused to 11 years' imprisonment:

(1) The four classical principles of sentencing — retribution, deterrence, prevention and rehabilitation — taken together balance public interest and the interest of the offender. It is in the public interest that society's abhorrence of the crime committed be reflected in the punishment meted out. It is in the public interest that the punishment meted out is such that the offender and others are deterred from committing similar or other offences (see paras 23–27).

(2) The fact that the accused was 21 years old at the time of the commission of the offence was not a factor to be taken into consideration in a case such as this.

Further, the fact that he was a first offender should also not be a factor to be taken into consideration in this case (see para 41).

(3) While a plea of guilty is not to be considered too favourably in a drug case, such a plea still merits some consideration, especially when the plea of guilty is made in the following circumstances: (a) a reduction in the charge is made by the Public Prosecutor who has in his possession the investigation papers and the full facts of the case; and (b) the plea of guilty is made before the trial is due to commence. This was what happened in the instant case (see paras 45–46).

(4) In the instant case, the High Court having taken into account the seriousness of the offence committed by the accused; the facts of the case; the stage at which the accused pleaded guilty; the sentences passed in similar cases and the minimum and maximum sentences provided for in s 39A(2) of the DDA, the appropriate sentence to be passed on the accused in this case was imprisonment for a term of 11 years and whipping of 10 strokes (see paras 55–56).

[Bahasa Malaysia summary

Tertuduh pada mulanya telah dituduh kerana kesalahan mengedar dadah berbahaya di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Satu pertuduhan alternatif pemilikan dadah di bawah s 6 ADB, yang boleh dijatuhkan hukuman di bawah s 39A(2) ADB kemudiannya telah dibuat terhadap tertuduh. Tertuduh telah mengaku bersalah terhadap pertuduhan alternatif ini. Pertuduhan alternatif kemudiannya telah dipinda untuk menambahkan berat dadah tersebut. Tertuduh telah mengaku bersalah pertuduhan alternatif yang dipinda ini. Dalam mitigasi, peguam telah mendesak mahkamah untuk mempertimbangkan, antara lain, yang berikut: (i) tertuduh merupakan pesalah kali pertama untuk kesalahan-kesalahan berkaitan dadah; (ii) tertuduh merupakan pesalah yang muda — berumur 21 tahun — pada masa tangkapannya; (iii) berat dadah itu tidaklah banyak; (iv) tertuduh telah mengaku bersalah dan oleh itu berhak mendapat peringanan. Pihak pendakwa bagaimanapun mengatakan bahawa kesalahan-kesalahan berkaitan dadah adalah serius dan penyalahgunaan dadah adalah musuh utama negara. Setelah menyabitkan tertuduh, Mahkamah Tinggi perlu mengenakan hukuman sesuai.

Diputuskan, menjatuhkan hukuman 11 tahun penjara ke atas tertuduh:

(1) Empat prinsip-prinsip klasik penghukuman — balasan, penghalang, pencegahan dan pemulihan — diteliti bersama mengimbangi kepentingan awam dan kepentingan pesalah. Adalah demi kepentingan awam bahawa kebencian masyarakat terhadap jenayah yang dilakukan digambarkan dalam hukuman yang dikenakan. Adalah demi kepentingan awam agar hukuman itu dikenakan sedemikian di mana pesalah dan orang lain tidak melakukan kesalahan yang sama atau yang lain (lihat perenggan 23–27).

(2) Fakta bahawa tertuduh berumur 21 tahun pada masa melakukan kesalahan bukanlah satu faktor yang perlu diambilkira dalam kes sebegini. Bahkan, fakta

bahawa beliau adalah pesalah kali pertama juga bukan satu faktor yang perlu diambilkira dalam kes ini (lihat perenggan 41).

(3) Jikapun pengakuan bersalah tidak patut diambilkira dalam kes dadah, pengakuan sedemikian masih bermeritkan sedikit pertimbangan, khususnya jika pengakuan bersalah dibuat dalam keadaan berikut: (a) satu pengurangan dalam pertuduhan dibuat oleh Pendakwa Raya yang terdapat dalam milikannya kertas siasatan dan fakta penuh kes; dan (b) pengakuan bersalah dibuat sebelum perbicaraan bermula. Inilah yang berlaku dalam kes semasa (lihat perenggan 45–46).

(4) Dalam kes semasa, Mahkamah TInggi telah mengambilkira keseriusan kesalahan yang dilakukan oleh tertuduh; fakta-fakta kes; peringkat di mana tertuduh mengaku bersalah; hukuman yang diberikan dalam kes yang sama dan hukuman minimum dan maksimum yang diperuntukkan dalam s 39A(2) ADB, hukuman sesuai yang patut diberikan terhadap tertuduh dalam kes ini adalah hukuman penjara bagi tempoh 11 tahun dan sebatan 10 kali (lihat perenggan 55–56).]

Notes

For a case on s 6 read with s 39A(2) of the Dangerous Drugs Act 1952, see 4 *Mallal's Digest* (4th Ed, 2003 Reissue) para 147.

For cases on sentencing for drug possession, see 5(1) *Mallal's Digest*(4th Ed, 2004 Reissue) paras 3362–3666, 3966.

Cases referred to

Ang Chai Seng v PP [2000] 2 MLJ 35 (refd)
Bachik bin Abdul Rahman v PP [2004] 2 MLJ 534 (refd)
Koay Teng Soon & Anor v PP [2000] 2 MLJ 129 (refd)
Mohamad Abdullah Ang Swee Kang v PP [1988] 1 MLJ 167 (refd)
PP v Dato' Waad bin Mansor [2005] 2 MLJ 101 (refd)
PP v Ooi Teng Chian [2006] 1 MLJ 213 (refd)
PP v Yeoh Eng Kuan [1976] 1 MLJ 238 (refd)
R v Sargent [1974] 60 Cr App R 74 (refd)
Tan Bok Yeng v PP [1972] 1 MLJ 214 (refd)
Teo Chin Hwa v PP [2000] 1 MLJ 687 (refd)
Tia Ah Leng v PP [2004] 4 MLJ 249 (refd)

Legislation referred to

Dangerous Drugs Act ss 6, 39A(2), 39B

Saiful Edris bin Zainuddin (Deputy Public Prosecutor) for the prosecution.
Rosal Azimin bin Ahmad for the accused.

Zaharah Ibrahim J:

INTRODUCTION

[1] The accused in this case was convicted by this court on 24 February 2006 under s 6 of the Dangerous Drugs Act 1952 ('DDA') of the offence of being in

possession of 1,220g of cannabis and sentenced to 11 years of imprisonment and ten strokes of whipping under sub-s 39A(2) of the DDA.

[2] The Public Prosecutor, being dissatisfied with the sentence imposed, filed an appeal on 3/3/2006.

CHARGE AND PLEA

[3] The accused was originally charged with the offence of trafficking in dangerous drugs under s 39B(1)(a) of the DDA.

[4] On 22 December 2005, deputy public prosecutor, En Saiful Edris bin Zainuddin informed the court that as a result of the accused's representation made through his defence counsel, Encik Rosal Azimin bin Ahmad, the public prosecutor had agreed to prefer an alternative charge (P3) against the accused under s 6 of the DDA, punishable under sub-s 39A(2) of the DDA. The subject matter of the alternative charge was 245g of cannabis.

[5] The alternative charge was read and explained to the accused in Bahasa Acheh through a Bahasa Acheh interpreter. The accused pleaded guilty to the alternative charge. The case was then postponed to 7 February 2006 for facts and sentence.

[6] On 7 February 2006, the deputy public prosecutor informed the court that there was a mistake in the alternative charge and he had to refer the matter back to the public prosecutor. The case was then postponed to 20 Febraury 2006.

[7] On 20 February 2006, an amended alternative charge (P 4) was read and explained to the accused in Bahasa Acheh. The amended alternative charge was still in respect of an offence under s 6 of the DDA, punishable under sub-s 39A(2) of the DDA. Howeve,r the weight of the cannabis as stated in P4 was 1,220g.

[8] The accused pleaded guilty to the amended alternative charge. The nature and consequences of his plea, in particular the punishment provided for in sub-s 39A(2) of the DDA were explained to the accused. The accused maintained his plea of guilty.

FACTS

[9] The deputy public prosecutor tendered the facts of the case (P5) which were read and explained to the accused and admitted by the accused to be true.

[10] According to P5, on 17 August 2004, about 9 o'clock in the morning, a police team led by Inspector Loi Yew Lik raided a 'kongsi' at a housing project in Bandar Utama. The team found the door to the third room in Block No 1 closed but unlocked. They found the accused lying down. When the team introduced themselves as the police, the accused rushed to the door and tried to run away. A struggle ensued before the accused was arrested.

[11] As the accused was being led away from the 'kongsi' the accused was seen throwing a key ring with two keys on it to the ground with his right hand. The police picked up the keys and, after being questioned, the accused led the police team to door no 16 in Block No 5. The door was padlocked and chained. Using the keys picked up earlier, the police managed to open the door and a search was made in the room.

[12] The police found in the room a package wrapped in newspaper and containing a full slab of dried leaves covered in aluminium foil and transparent plastic. They also found in some space in the wall of the room, a partial slab of dried leaves covered in transparent plastic and chinese newspaper. The dried leaves were suspected to be cannabis. The slab and partial slab were seized and subsequently sent to the chemistry department for analysis. The dried leaves were confirmed to be cannabis, the total weight of which was 1,220g.

MITIGATION

[13] In mitigation, En Rosal urged the court to take into account the following factors:

(1) the accused was a first offender except that he was sentenced to six months imprisonment for committing an immigration offence on the date of his arrest on 17 August 2004;

(2) the accused was a young offender being 21 years of age at the time of arrest;

(3) the accused was remorseful as shown by the fact that he had pleaded guilty on the very first date that the alternative charge was read to him;

(4) the weight of the drug which was the subject matter of the offence was not exceptionally large;

(5) the accused had pleaded guilty and was therefore entitled to a discount.

[14] Encik Rosal Azimin informed the court that the accused had entered Malaysia from Acheh about three months before his arrest and was helping his foster brother in the latter's grocery shop in Padang Jawa, in Klang. At the time of arrest he was just about to apply for a job at a construction site in Damansara Utama, having been persuaded to do so by a friend 'yang masih bebas' (who was still at large).

PROSECUTION'S REPLY

[15] Encik Saiful Edris, the deputy public prosecutor confirmed that the accused had a conviction for not being in possession of valid travel documents at the time of his arrest for this case.

[16] Encik Saiful Edris pointed out to the court that drug-related offences are serious offences and drug abuse is the nation's enemy number one. He also pointed out that the drug involved in this case was six times more than the amount which

would trigger the presumption of trafficking under s 37 (da) of the DDA. The drug was therefore clearly not for the accused's own consumption.

CONVICTION

[17] Having read the facts and seen the exhibits tendered by the prosecution, in particular the chemist report (P6), I was satisfied that the offence was an offence under s 6 of the DDA and punishable under sub-s 39A(2) of the DDA.

[18] Having ensured that the accused understood the nature and consequences of his plea of guilt and having heard his plea of mitigation, I was satisfied that the accused pleaded guilty voluntarily with full knowledge of the nature and consequences of that plea. I therefore accepted his plea of guilty and convicted him of the offence as in the amended alternative charge.

SENTENCE

Aims of sentencing

[19] In determining the appropriate sentence to be passed on the accused, I had to bear in mind, first of all, the generally accepted aims of sentencing. These have been stated in one form or another in various cases over the years, one of the latest being the case of *Public Prosecutor v Dato' Waad bin Manser* [2005] 2 MLJ 101. In that case, the Federal Court quoted what was said by Lawton LJ in *R v Sargent* [1974] 60 Cr App R 74 at p 77 on the principles of sentencing. his Lordship said:

> Those classical principles are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.

Retribution

[20] In respect of retribution, his Lordship Lawton CJ said (as quoted in *Dato' Waad*'s case):

> I will start with retribution. The old testament concept of an eye for an eye and tooth for tooth no longer plays any part in our criminal law. There is, however, another aspect of retribution which is frequently overlooked: it is that society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand courts must not disregard it. Perhaps the main duty of the court is to lead public opinion.

[21] The degree of abhorrence with which a society, views certain crimes is not static. This is evident from the punishment provided for such crimes in the laws passed by society's representatives in the legislature.

[22] In the case of dangerous drugs, the DDA had been amended several times over the years to enhance the punishments for offences against the act. Currently, sub-s 39A(2) of the DDA makes it mandatory for a person convicted of being in possession of 50g or more in weight of cannabis to be sentenced to imprisonment for life or for a term of which shall not be less than five years and also to whipping of not less than ten strokes.

Deterrence, prevention and rehabilitation

[23] I should also bear in mind what was said by his Lordship Lord Lawton CJ in *R v Sargent* on deterrence, prevention and rehabilitation.

[24] On deterrence, his Lordship said:

> There are two aspects of deterrence: deterrence of the offender and deterrence of likely offenders. Experience has shown over the years that deterrence of the offender is not a very useful approach, because those who have their wits about them usually find the closing of prison gates an experience which they do not want again. If they do not learn that lesson, there is likely to be a high degree of recidivism anyway. So far as deterrence of others is concerned, it is the experience of the courts that deterrent sentences are of little value in respect of offences which are committed on the spur of the moment, either in hot blood or in drink or both. Deterrent sentences may very well be of considerable value where crime is premeditated. Burglars, robbers and users of firearms and weapons may very well be put off by deterrent sentences.

[25] On prevention, his Lordship said:

> Unfortunately it is one of the facts of life that there are some offenders for whom neither deterrence nor rehabilitation works. They will go on committing crimes as long as they are able to do so. In those cases the only protection which the public has is that such persons should be locked up for a long period.

[26] On rehabilitation, his Lordship said:

> Finally, there is the principle of rehabilitation. Some 20 to 25 years ago there was a view abroad, held by many people in executive authority, that short sentences were of little value because there was not enough time to give in prison the benefit of training. That view is no longer held as firmly as it was. This young man does not want prison training. It is not going to do him any good. It is his memory of the clanging of prison gates which is likely to keep him from crime in the future.

[27] To my mind, the four classical principles taken together balance public interest and the interest of the offender. It is in the public interest that society's abhorrence of the crime committed be reflected in the punishment meted out. It is in the public interest that the punishment meted out is such that the offender and others are deterred from committing similar or other offences.

A OTHER FACTORS TO BE TAKEN INTO ACCOUNT

[28] As the punishment for the offence in the case before me must be that provided for in sub-s 39A(2) of the DDA, a custodial sentence is unavoidable.

B **[29]** How long should the term of imprisonment be, bearing in mind the principles of sentencing as discussed by his Lordship Lord Lawton CJ above?

[30] In the case of *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167, the Supreme Court said (at p 170):

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> In assessing the length of custodial sentence, the court must look at the overall picture in perspective by considering, firstly, *the gravity of the type of offence committed*; secondly, *the facts in the commission of the offence*; thirdly, *the presence or absence of mitigating factors*, and, fourthly, *the sentences that have been imposed in the past for similar offences to determine the trend of sentencing policy*, if any. The fact that a sentence of imprisonment is imposed as a deterrence does not justify the sentencer in passing a sentence of greater length than what the facts of the offence warrant. The gravity of the type of offence involved must be considered in the light of the particular facts of the offence. (Emphasis added.)

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Gravity of the type of offence

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[31] That the offence committed by the accused in this case is serious and is not in question. In *Tia Ah Leng v Public Prosecutor* [2004] 4 MLJ 249, the Court of Appeal emphasized the seriousness of drug cases. It said (at p 254):

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> … The Government and the legislature have taken very serious views in the abuse of usage of dangerous drugs. Drug addictions are rampant and the Government as well as the legislature have tried to curb these addictions especially amongst youths but met with little success. Death sentences and heavy penalties have been introduced but we find drug addicts everywhere. The addiction to drugs have led to other offences such as thefts, burglary and snatch thefts. Some of these offences lead to serious consequences. We have read in the

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> newspapers that some drug addicts have gone to the extent of hurting their own families such as their mothers, sisters and grandmothers in order to get some money to purchase the drugs to support their addictions. Recently, a woman died when a snatcher snatched her handbag and she was dragged together with the handbag some distance away and as a result of that she died.

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> In our view, the source of all these evils are the drug traffickers and the drug peddlers. They are the ones who have been trafficking, selling and peddling the drugs to those drug addicts. It is public knowledge that the return in this type of business is very lucrative. The seriousness of the offences on drugs have been made known since the seventies. Eminent judges have expressed this in so many cases.

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The facts in the commission of the offence

[32] As the accused in the case before me had pleaded guilty to the amended alternative charge, the only sources from which the facts of the commission of the offence could be obtained were P5 and the accused's plea of mitigation.

[33] P5 showed that the accused was not in physical custody of the drugs in question. He was seen throwing the keys which later were used to open the door to the room in which the drugs were found. There was also no indication in P5 of whether any worker or anyone else was present during the raid apart from the police officers and the accused.

[34] In his mitigation, it was said that he had been working in Klang and was about to apply for a job at a construction site in Damansara Utama. As the raid during which the accused was arrested happened around 9 o'clock in the morning on 17 August 2004, a Tuesday, and the accused was found lying down in an unlocked room in the kongsi, he was probably not yet a worker there. He was persuaded to apply for a job at the construction site by friends 'yang masih bebas'. Those friends must have been working at the construction site, otherwise the accused would not have been there or able to be there.

[35] Did the drugs belong to the accused? Neither P5 nor the accused's plea of mitigation made any reference to the owner of the drugs.

[36] There was a possibility and the benefit of that must be given to the accused that the accused was merely the 'sentry' so to speak of the room in which the drugs were found and that it was in that capacity that he had possession of the drugs.

Mitigating factors

Age of accused and that he is a first offender

[37] Should the fact that the accused was 21 years of age at the time of the commission of the offence and was a first offender be taken into account?

[38] In *Koay Teng Soon & Anor v Public Prosecutor* [2000] 2 MLJ 129 the Court of Appeal had to deal with two accused persons who were 18 and 17 years of age, respectively, at the time of the commission of the offence. The Court of Appeal quoted what was said by his Lordship Sharma J in *Tan Bok Yeng v Public Prosecutor* [1972] 1 MLJ 214, as follows:

> The second accused was 20 years of age while the appellant was 25 years at the date of the commission of the crime. I am quite aware that the law does provide for a lesser sentence or no sentence at all imposed upon persons of young age. There has, however, emerged in recent years in our society certain species of crimes which the alacrity of mind and body, the dare, dash and defiance of the youth alone is capable of performing and producing. Law cannot, in my view, remain merely a static and a meaninglessly passive, if ornamental and an orthodox instrument of justice, ineffective in its results and application. The social needs of the times have to be met and effectively met. It is not merely the correction of the offender which is the prime object of the punishment. The considerations of public interest have also to be borne in mind. In certain types of offences a sentence has got to be deterrent so that others who are like-minded may be restrained from becoming a menace to society.

[39] In *Public Prosecutor v Yeoh Eng Khuan*; [1976] 1 MLJ 238, the appellant was 20 years and 7 months of age at the time of the commission of the offence which was

punishable under subsection 39A of the DDA. He was bound over by the sessions court under s 294 of the Criminal Procedure Code. On appeal to the High Court, his Lordship Abdoolcader J (as he then was) set aside the order and sentenced the appellant to imprisonment for a term of three years which was the minimum punishment prescribed in s 39A at that time. His Lordship's explanation for that course of action was as follows:

> Drug taking is a menace and drug trafficking and pushing is becoming so rampant. Persons indulging in such activities are a scourge to society and unless the courts consider deterrence and the public interest as vital factors in sentencing, what would result would be a virtual licence for the kingpins of organisations in the drug trade to use young persons as a front not only in the hope that they themselves would escape punishment but also that the age of these hench-boys would deter the courts from sending them to prison. Unless the courts take a firm stand in the matter the whole purpose of the legislature in enacting in its wisdom s 39A of the Ordinance which imposes a minimum mandatory term of imprisonment of three years and a maximum of 14 years would be lost.

[40] His Lordship's Abdoolcadeer J's views in *Yech Eng Khuan*'s case have been cited with approval in other cases since, included by the Court of Appeal in *Teo Chin Hwa v Public Prosecutor* [2000] 1 MLJ 687 and *Ang Chai Seng v Public Prosecutor* [2000] 2 MLJ 35.

[41] The fact that the accused in the case before me was 21 years old at the time of the commission of the offence therefore was not a factor to be taken into consideration in a case such as this. For the same reasons as stated in the cases cited above, the fact that he is a first offender should also not be a factor to be taken into consideration in this case.

Plea of guilty

[42] In *Bachik bin Abdul Rahman v Public Prosecutor* [2004] 2 CLJ 572, the Court of Appeal explains that although it is generally accepted that an accused who pleads guilty ought to be given a discount until as much as a third of the sentence which would be imposed upon him but for the plea of guilty, this is not a strict rule as the court may in the exercise of its discretion, refuse to grant any discount in an appropriate case, depending upon the facts and circumstances of the case.

[43] In the case of *Public Prosecutor v Ooi Teng Chian* [2006] 1 MLJ 213 the Court of Appeal said that:

> It is well established that sentencing in drug offences must reflect the public interest to be served as it is an on-going national problem. The weight of the drugs involved is another factor to be considered. In this case, the amount of dangerous drugs involved is very substantial. In such circumstances, neither the guilty plea of the accused nor the fact that he is a first offender can be considered *too favourably* in favour of the accused. (Emphasis added.)

[44] In the case before me, on the first occasion that the accused appeared before this court after a defence counsel was appointed to represent him, the court was

informed that the accused had instructed his counsel to request the public prosecutor to have the charge against him reduced. When that request was granted, the accused had pleaded guilty at the first available opportunity. He maintained his plea of guilty even after the weight of the drug in the charge was changed from 245g to 1220g.

[45] While a plea of guilty is not to be considered too favourably in a drug case, I am of the view that it still merits some consideration, especially when the plea of guilty is made in the following circumstances:

(1) the reduction in charge is made by the public prosecutor who has in his possession the investigation papers and the full facts of the case;

(2) the plea of guilty is made before the trial is due to commence.

[46] In the case before me that was what happened

Sentences that have been imposed m the past for similar offences

[47] A survey of the sentences that had been imposed in the past for similar offences revealed a mixed trend.

[48] In the case of cannabis where a charge under s 39B of the DDA had been reduced to s 6 of the DDA, the sentences imposed or upheld by the Federal/Supreme Court under sub-s 39A(2) of the DDA in several reported cases are as in Table 1 below.

[49] The sentences which have been imposed or upheld by the Court of Appeal under sub-s 39A(2) of the DDA in cases where a charge under s 39B of the DDA had been reduced to s 6 of the DDA are as shown in Table 2 below.

Table 1: Cannabis — Federal/Supreme Court

Case	Weight of cannabis	Comparison with minimum weight under s 39A(2)	Sentence at the end of appeal process in the Federal Court/ Supreme Court
Mohamad Radzi bin Abu Bakar v PP [2006] 1 CLJ 457	342.1g	6.842 times	Imprisonment: 18 years Whipping: 10 strokes
Haryadi bin Dadeh v Public Prosecutor [2000] 4 MLJ 71	251.06g	5.0212 times	Imprisonment: 10 years Whipping: 10 strokes
Subramaniam a/l Arumugam v Public Prosecutor [2000] 2 MLJ 193	236.07g	4.7214 times	Imprisonment: 12 years Whipping: 10 strokes

Mohd Said Samad v PP [1998] 2 CLJ 161	639.3g	12.786 times	Imprisonment: 12 years Whipping: 10 strokes
Muhammed Hassan v PP [1998] 2 CLJ 170	1748.8g	34.976 times	Imprisonment: 16 years Whipping: 10 strokes
Leong Bon Huat [1993] 3 MLJ 11	793.85g	15.877 times	Imprisonment: for life Whipping: 10 strokes

[50] Of the cases shown in Table 1, the closest to the case before me is the case of *Muhammed Hassan v PP*. In that case, the weight of the cannabis in question was 1,748.8g as compared to 1,220g in the case before me. However, that case was tried in full before the High Court and the appellant was originally sentenced to death.

Table 2: Cannabis — Court of Appeal

Case	Weight of cannabis	Comparison with minimum weight under s 39A(2)	Sentence at the end of appeal process in the Court of Appeal
Reza Mohd Shah Ahmad Shah v PP [2005] 4 CLJ 581	795.3g	15.906 times	Imprisonment: 18 years Whipping: 10 strokes
Public Prosecutor v Hairul Din bin Zainal Abidin [2004] 1 MLJ 539	953.2g	19.064 times	Imprisonment: 10 years Whipping: 10 strokes
Shariff bin Kadir v Public Prosecutor [2003] 2 MLJ 203	12,793g	255.86 times	Imprisonment: 20 years Whipping: None due to age
Mumamad Safarudin bin Baba & Anor v Public Prosecutor [2002] 4 MLJ 353	1,031g	20.62 times	Imprisonment: 12 years Whipping: 10 strokes
Taib bin Mohamad v PP [2002] 3 MLJ 476	2,828g	56.56 times	Imprisonment: 14 years Whipping: 10 strokes
Mohd Taufiq Mani Abdullah lwn PP [2002] 1 CLJ 558	2,808.8g	56.176 times	Imprisonment: 15 years Whipping: 10 strokes

Loo Kia Meng v PP [2000] 3 MLJ 664	4,105g	82.1 times	Imprisonment: 15 years Whipping: 10 strokes
Yusmarin bin Samsudin v Public Prosecutor [1999] 4 MLJ 627	2,863g	57.26 times	Imprisonment: 18 years Whipping: 10 strokes

[51] Of the cases in Table 2, the closest to the case before me is *Muhamad Safarudin bin Baba & Anor v Public Prosecutor* where the weight of cannabis in question was 1,031g. The term of imprisonment imposed by the Court of Appeal was 12 years.

[52] By comparison, in *Taib bin Mohamad v Public Prosecutor* where the weight of the cannabis was more than double that in the case before me, the term of imprisonment imposed by the Court of Appeal was 14 years. The weight of cannabis in *Loo Kia Meng v Public Prosecutor* was more than three times that in the case before me. The Court of Appeal imposed a term of imprisonment of 15 years.

[53] A survey was also undertaken of sentences passed by the High Courts in several reported cases of a similar nature. The cases are as shown in Table 3 below:

Table 3: Cannabis — High Court

Case	Weight of cannabis	Comparison with minimum weight under s 39A(2)	Sentence
PP lwn Razali Johari [2002] 8 CLJ 861	738.31g	14.7662 times	Imprisonment: 12 years Whipping: 10 strokes (Pleaded guilty after defence is called on reduced charge)
Pendakwa Raya v Mohd Fuad bin Othman [2001] 5 MLJ 549	1,143g	22.86 times	Imprisonment: 9 years Whipping: 10 strokes (Pleaded guilty to alternative charge before trial commenced)

PR lwn Wahid bin Yaakob [1996] 5 MLJ 29	11,389.6g	227.792 times	Imprisonment: 14 years Whipping: 10 strokes (Pleaded guilty to alternative charge before trial commenced)
PP v Chong Chee Kin & Anor [1995] 2 MLJ 679	644g	12.88 times	Imprisonment: 12 years Whipping: 12 strokes (Pleaded guilty after defence is called on reduced charge)

[54] Of the cases in Table 3, the closest, in terms of the weight of cannabis involved, to the case before me is the case of *Pendakwa Raya v Mohd Fuad bin Othman*.

CONCLUSION

[55] Having taken into account:

(1) the seriousness of the offence committed by the accused;

(2) the facts of the case as shown in P5 and as contained in the accused's plea of mitigation;

(3) the stage at which the accused pleaded guilty;

(4) the sentences passed in similar cases as shown in Tables 1, 2 and 3 above; and

(5) the minimum and maximum sentences provided for in sub-s 39A(2) of the DDA,

[56] I came to the conclusion that the appropriate sentence to be passed on the accused in this case was imprisonment for a term of 11 years and whipping of 10 strokes. That sentence was pronounced in open court on 26 February 2006.

Imprisonment for a term of 11 years and 10 strokes of whipping.

Reported by John Paul Simon